

Message Text

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ACTION L-03

INFO OCT-01 IO-13 ADP-00 AF-10 ARA-16 EA-11 EUR-25 NEA-10

RSC-01 CIAE-00 DODE-00 PM-07 H-03 INR-10 NSAE-00

NSC-10 PA-03 PRS-01 SS-15 USIA-15 COA-02 EB-11 OIC-04

ACDA-19 AEC-11 AGR-20 CG-00 COME-00 DOTE-00 FMC-04

INT-08 JUSE-00 NSF-04 TRSE-00 OMB-01 RSR-01 /239 W

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C O N F I D E N T I A L GENEVA 4588

E.O. 11652: GDS

TAGS: PBOR, UN

SUBJ: LOS: MEETING WITH AFRICAN LEADERS

1. CHAIRMAN OF THE U.S. DELEGATION (STEVENSON) MET WITH NJENGA OF KENYA AND WARIOBA OF TANZANIA, THE MOST ACTIVE AFRICAN LEADERS AT THIS SESSION, PRINCIPALLY TO REVIEW THEIR ATTITUDE TOWARD U.S. PROPOSALS OF INTERNATIONAL STANDARDS AND DISPUTE SETTLEMENT IN RESPECT OF COASTAL STATE RESOURCE JURISDICTION.

2. THEIR ATTITUDE ON THESE ISSUES WAS AS FOLLOWS:

A. COMPULSORY DISPUTE SETTLEMENT-THEY AGREED THAT SOME SORT OF DISPUTE SETTLEMENT WILL BE DESIRABLE BUT FOR THE PRESENT WOULD PREFER NOT TO HAVE IT COMPULSORY OR AT LEAST NOT COMPULSORY UNTIL A REASONABLE TIME FOR EXHAUSTING NON-COMPULSORY METHODS. BOTH REFERRED TO STRONG AFRICAN PREDILECTION FOR NEGOTIATED AS OPPOSED TO JUDICIAL

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SETTLEMENT. STEVENSON INDICATED VALUE OF COMPULSORY

SETTLEMENT AS ULTIMATE RESORT IN LEADING PARTIES TO NEGOTIATE WITH REASONABLE PROMPTNESS. DRAFT ARTICLE INTENDED TO TAKE INTO ACCOUNT AFRICAN DESIRES FOR VOLUNTARY AND REGIONAL DISPUTE SETTLEMENT OF DISPUTES AMONG AFRICAN STATES. WARIOBA INDICATED THIS IS SUBJECT ON WHICH FURTHER NEGOTIATIONS WERE NECESSARY AND REFERRED FAVORABLY TO NEGOTIATIONS WITH U.S. ON DISPUTE SETTLEMENT PROVISIONS INCLUDED IN VIENNA CONVENTION ON LAW OF TREATIES.

B. PROVISIONS ON PROTECTION OF FOREIGN INVESTMENT- BOTH NJENGA AND WARIOBA INDICATED THEIR VIEW THESE PROVISIONS UNACCEPTABLE TO AFRICANS DESPITE ADHERENCE BY MANY AFRICAN STATES TO WORLD BANK CENTER FOR SETTLEMENT OF INVESTMENT DISPUTES, BILATERAL TREATIES PROTECTING INVESTMENT AND CONSTITUTIONAL PROVISIONS. THEY POINTED TO WHAT THEY CONSIDERED THE SUCCESSFUL NEGOTIATED RESOLUTION BY AFRICAN COUNTRIES OF INVESTMENT DISPUTES AND DESIRE NOT TO ESCALATE THESE DISPUTES TO LEVEL OF INTERNATIONAL LEGAL PROCEEDINGS WHEN DOMESTIC REMEDIES AND NEGOTIATIONS HAD PROVED SUCCESSFUL. THEY FURTHER STATED THAT THEY SAW NO REASON WHY AFRICAN STATES. SHOULD ACCEPT A HIGHER OBLIGATION IN RESPECT OF THEIR COASTAL JURISDICTION THAN ON LAND. WARIOBA INDICATED TANZANIA OPPOSITION ALSO A RESULT OF VERY STRONG REACTION TO THE U.S. HICKENLOOPER AMENDMENT PROVISIONS.

STEVENSON POINTED OUT THAT U.S. PROVISIONS DESIGNED TO PREVENT ESCALATION OF INVESTMENT DISPUTES TO POLITICAL LEVEL AND FOR THEIR HANDLING ON ROUTINE LEGAL BASIS THAT IN NO RESPECT WOULD AFFECT COASTAL STATE DISCRETION IN DETERMINING WHETHER IT WANTED FOREIGN INVESTMENT AND ON WHAT TERMS BUT TO PROVIDE STABILITY ONCE INVESTMENT MADE. U.S. VIEW THAT COASTAL JURISDICTION SHOULD NOT BE VIEWED AS SAME AS STATES' LAND TERRITORY AND OPPORTUNITY FOR DEVELOPMENT OF MORE EFFECTIVE INTERNATIONAL RULES IN THIS AREA. FINALLY, POINTED OUT THAT SUCH PROVISIONS COULD MAKE INVESTMENT BY FOREIGN ENTERPRISES WITH CONFIDENTIAL

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TECHNOLOGY AND CAPITAL MORE ATTRACTIVE AND DEVELOPING COUNTRIES COULD BENEFIT BY OBTAINING MORE FAVORABLE TERMS.

C. FISHERIES-WARIOBA AND NJENGA INDICATED THAT THEY WERE PREPARED TO CONSIDER INTERNATIONAL STANDARDS WITH RESPECT TO CONSERVATION OF HIGHLY MIGRATORY SPECIES WITHIN THE ECONOMIC ZONE BUT WITH ENFORCEMENT JURISDICTION SOLELY IN THE COASTAL STATE. THEY WOULD NOT WISH

INTERNATIONAL STANDARDS WITH RESPECT TO ALLOCATION OF
HIGHLY MIGRATORY SPECIES BUT WOULD BE PREPARED TO ACCEPT
A GENERAL OBLIGATION TO ADMIT FOREIGN FISHERMEN ON A
NON-DISCRIMINATORY BASIS WHERE THE COASTAL STATE IS NOT
FULLY UTILIZING THE STOCKS OF FISH. IN THEIR VIEW,
ECONOMIC COMPETITION WOULD BE SUFFICIENT GUARANTY
THAT COASTAL STATES WOULD IN FACT ADMIT FOREIGN FISHERMEN
WHenever THEY WERE NOT FULLY UTILIZING THE STOCKS AND
THEY NOT DISPOSED TO ACCEPT INTERNATIONAL STANDARDS
FOR LICENSE FEES AND OTHER TERMS OF ACCESS.

D. POLLUTION-WITH RESPECT TO THEIR PROPOSAL FOR REGULATION OF
VESSEL-SOURCE POLLUTION WITHIN THE ECONOMIC ZONE, WARIOBA
INDICATED TANZANIA MORE CONCERNED WITH COASTAL
STATE RIGHT TO ENFORCE AND TRY VIOLATORS THAN WITH
RESPECT TO THE STANDARDS QUESTION. HE DID INDICATE IN
HIS VIEW THAT IF COASTAL STATE DID HAVE THE LEVERAGE OF RESIDUAL
LEGISLATIVE JURISDICTION, IT WOULD BE DIFFICULT TO GET
SUFFICIENTLY HIGH INTERNATIONAL STANDARDS. HE DID NOT
FEEL PORT STATE JURISDICTION WAS ADEQUATE BECAUSE IT
GAVE THE OFFENDERS THE OPPORTUNITY TO GO TO FRIENDLY
JURISDICTION FOR DETERMINATION OF ALLEGED VIOLATIONS.

3. BOTH NJENGA AND WARIOBA INDICATED THEIR CONCERN
ABOUT THE HARD LINE SOVIET ATTITUDE AND
UNWILLINGNESS TO NEGOTIATE. THEY WERE PARTICULARLY
ANNOYED THAT THE SOVIETS HAD NEVER TALKED WITH THEM
PRIVATELY. WHEN I POINTED OUT TO THEM THAT THE SOVIETS
HAD INDICATED A WILLINGNESS TO NEGOTIATE AND HAD IN FACT
INITIATED DISCUSSION ON ECONOMIC ZONE IN THE CHAIRMAN'S
CONSULTATION GROUP, THEY BOTH INDICATED THAT THE
CONSULTATIONS HAD COME TOO LATE AND AT THE TIME THEY
WERE BOTH CONCERNED WITH NEGOTIATIONS WITH THE OTHER
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COASTAL STATES.

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